

RECORDING REQUESTED BY:

USS-POSCO Industries, 900 Loveridge
Road Pittsburg, California 94565

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Attention: Daniel F. Murphy
Unit Chief,
Brownfields and Environmental
Restoration Program



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder

DOC- 2010-0132574-00

Check Number

Thursday, JUL 01, 2010 13:53:39

MOD \$17.00:REC \$27.00:FTC \$16.00

RED \$1.00:ERD \$1.00:

Ttl Pd \$62.00

Nbr-0000516703

rrc/R9/1-17

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: A limited portion of *County of Contra Costa APN 073-200-021 UPI Pittsburg Facility Site L-A Property, DTSC site code number 520024.*)

This Covenant and Agreement ("Covenant") is made by and between USS-POSCO Industries (the "Covenantor") and the Department of Toxic Substances Control (the "Department"). The Covenantor is the current owner of property situated in Pittsburg, County of Contra Costa, State of California, comprising approximately 148.80 acres, depicted within the "PROPERTY LINE" in Exhibit "1" ("Existing Boundary Area 1"), attached, and described as *County of Contra Costa APN 073-200-021*. The approximately 120.7-acre portion of the property subject to this covenant (the "Property") is depicted in Exhibit "2" ("Area of L.U.C.") and described in Exhibit "3" ("Legal Description of 'Area of L.U.C.'"), attached. Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25202.5 that the use of the Property be restricted as set forth in this Covenant; and the

Parties further agree that this Covenant conforms with the requirements of California Code of Regulations, title 22, section 67391.1, and that this Covenant shall be recorded against the Property.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property subject to this covenant, totaling approximately 122.6 acres, is more particularly described and depicted in the attached Exhibits "2" and "3." The Property is a limited portion of the area now generally bounded by the Burlington Northern Santa Fe Railroad to the north, Columbia Street to the west, the Pittsburg Antioch Highway to the south, and Loveridge Road to the East. The Property subject to this covenant is a limited portion of the property described as Contra Costa County Assessor's Parcel No.: 073-200-021.

1.02. In June 1994, the Department completed a RCRA Facility Assessment concluding that hazardous constituents (associated with prior steel-making operations) had been released onto soil at the Property, also known as Site L-A. Site L-A was designated as Site Waste Management Unit No. 24. (SWMU No. 24). A RCRA Facility Investigation (RFI) Workplan was prepared by Covenantor and approved by the Department on July 3, 1996. Covenantor performed the RFI, and the Department approved the RFI Final Report on August 11, 1998. Based on the RFI, the Department concluded that certain areas of the Property evaluated in the RFI warranted inclusion in the Corrective Measures Study (CMS) phase of the corrective action process. On June 17, 1999, the Department approved site-specific, industrial/commercial risk-based soil cleanup levels for arsenic and lead. The remedy-selection process for the SWMU No. 24 was documented in the Department's Notice of Decision dated September 26, 2002. The remedies selected and resulting residual soil contamination are as follows:

a) Soils known to contain arsenic above the industrial/commercial cleanup level (160 ppm) were excavated and hauled to either the Corrective Action Management Unit (CAMU) on a portion of Covenantor's property adjacent to the Property, or to an appropriate off-site facility.

b) Soils were remediated to remove lead to meet the industrial/commercial cleanup level of 5500 ppm as determined by a 95% upper confidence limit. Contaminated soils were excavated and hauled to either the CAMU or an appropriate off-site facility. The maximum lead

level in residual soils known to exist at the site is 14,000 ppm.

c) Soils were remediated to remove PCBs to achieve a 1ppm cleanup level approved by the United States Environmental Protection Agency [in 40 CFR §761.61(a)] as determined using a 95% upper confidence limit. Contaminated soils were excavated and hauled to an appropriate off-site facility. The maximum PCB level in residual soils known to exist at the site is 6.3 ppm.

1.03 On May 26, 2004, Covenantor submitted to the Department a Corrective Action Measures Completion Report, documenting the completion of the excavation and hauling described above. On March 3, 2005, the Department approved the Corrective Action Measures Completion Report (Partial Soils Phase). Note that this approval was for a "Partial Soils Phase" and the remedy will not be deemed complete for Site L-A until this LUC has been filed.

1.04 A Land Use Covenant for the Property shall restrict the Property to industrial use only and that prior to any future grading, trenching or excavation projects at this Property, the Owner shall require that project specific Soil Management and project specific Health and Safety Procedures be prepared. These documents shall be prepared in accordance with the latest Department-approved Soil Management Plan for Site L-A, and Health Safety Plan for Site L-A. The Department is imposing this requirement due to the known presence of lead in soil above the construction worker screening level (1200 ppm) and the possibility of encountering other contaminants (see Section 4.02).

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25202.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect the proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant.

ARTICLE IV RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) Raising of food (cattle, food crops).

4.02. Soil Management. Activities that will disturb the soil such as grading, excavation, removal, trenching, filling, earth movement, or mining, shall only be permitted on the Property in accordance with the latest Department-approved Health and Safety Plan (HSP) (prepared by a California certified Industrial Hygienist) and Soil Management Plan (SMP). Both documents require approval by the Department. The HSP and SMP shall be protective of construction workers due to the known presence of lead in soil above the construction worker screening level (1,200 ppm) and the possibility of encountering other contaminants such as arsenic and PCBs. Project specific Health and Safety Procedures and project specific Soil Management Procedures shall be consistent with the DTSC-approved Site L-A HSP and SMP respectively.

The Covenantor shall notify the Department 30 days in advance of any planned earth movement work. The notification shall include the anticipated construction schedule, and copies of the project specific Health and Safety Procedures and Soil Management Procedures. Any contaminated soils brought to the surface shall be managed in accordance with the approved SMP and all applicable laws and regulations.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of cattle, food crops, or agricultural products.
- (b) Drilling for drinking water, oil, or gas.
- (c) Extraction of groundwater for purposes other than site remediation, groundwater monitoring, or construction dewatering.
- (d) Any activities that may interfere with the selected remedy or operation and maintenance activities required for the Site.

4.04 Non-Interference with Groundwater Monitoring Wells and Remediation Wells: Activities that may disturb the groundwater monitoring wells and remediation wells (e.g., excavation, grading or removal of soil; trenching; filling; earth movement; or mining) shall not be permitted on the Property without prior review and approval by the Department. All uses and development of the Property shall preserve the integrity and physical accessibility of any groundwater monitoring wells and remediation wells that have not been closed with the approval of the Department.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities of the corrective action shall have reasonable right of entry and access to the Property for the purpose of implementing the operation and maintenance requirements until such time as DTSC determines that no further operation and maintenance is required.

4.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an annual inspection report to the Department for its approval by January 15th of each year. The annual inspection report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual inspection report (e.g., drive by, fly over, walk in, etc.) If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation ceases immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions, as

provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a

corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Christopher A. Conkling, Esq.,
General Counsel and Secretary
USS-POSCO Industries
900 Loveridge Road
P.O. Box 471
Pittsburg, California 94565

,and

To Department:

Daniel F. Murphy
Unit Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710-2721

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: USS-POSCO Industries

By: 

Title: Christopher A. Conkling, Esq., General Counsel and Secretary

Date: 7/1/10

STATE OF CALIFORNIA)

)

See attached

COUNTY OF _____)

On this _____ day of _____, in the year _____,

before me _____, personally appeared

_____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is /are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGMENT

State of California
County of Contra Costa } ss.

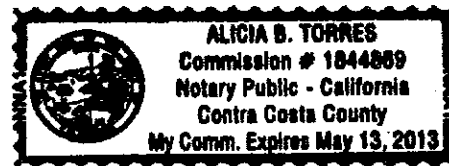
On July 1, 2010 before me, Alicia B. Torres,
Notary Public, personally appeared Christopher A. Conkling,

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Alicia B. Torres
Signature



(seal)

OPTIONAL INFORMATION

Date of Document _____ Thumbprint of Signer _____

Type or Title of Document _____

Number of Pages in Document _____

Document in a Foreign Language _____

Type of Satisfactory Evidence:

- ☐ Personally Known with Paper Identification
☐ Paper Identification
☐ Credible Witness(es)

Capacity of Signer:

- ☐ Trustee
☐ Power of Attorney
☐ CEO / CFO / COO
☐ President / Vice-President / Secretary / Treasurer
☐ Other: _____

☐ Check here if
no thumbprint
or fingerprint
is available.

Other Information: _____

Department of Toxic Substances Control

By: _____

Title: Daniel E. Murphy, Unit Chief, Brownfields and Environmental Restoration
Program (Cleanup Program)

Date: _____

STATE OF CALIFORNIA)

COUNTY OF _____)

On this _____ day of _____, in the year _____,
before me _____, personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is /are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

ACKNOWLEDGMENT

State of California

County of ALAMEDA

On JUNE 30, 2010 before me, Ying Wai Chan, California Notary Public,
(here insert name and title of the officer)

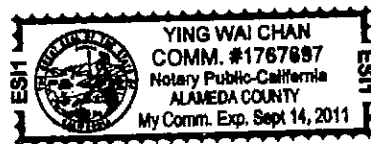
personally appeared DANIEL E. MURPHY

~~personally known to me (or proved to me on the basis of satisfactory evidence)~~ to be the
person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to
me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by
his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

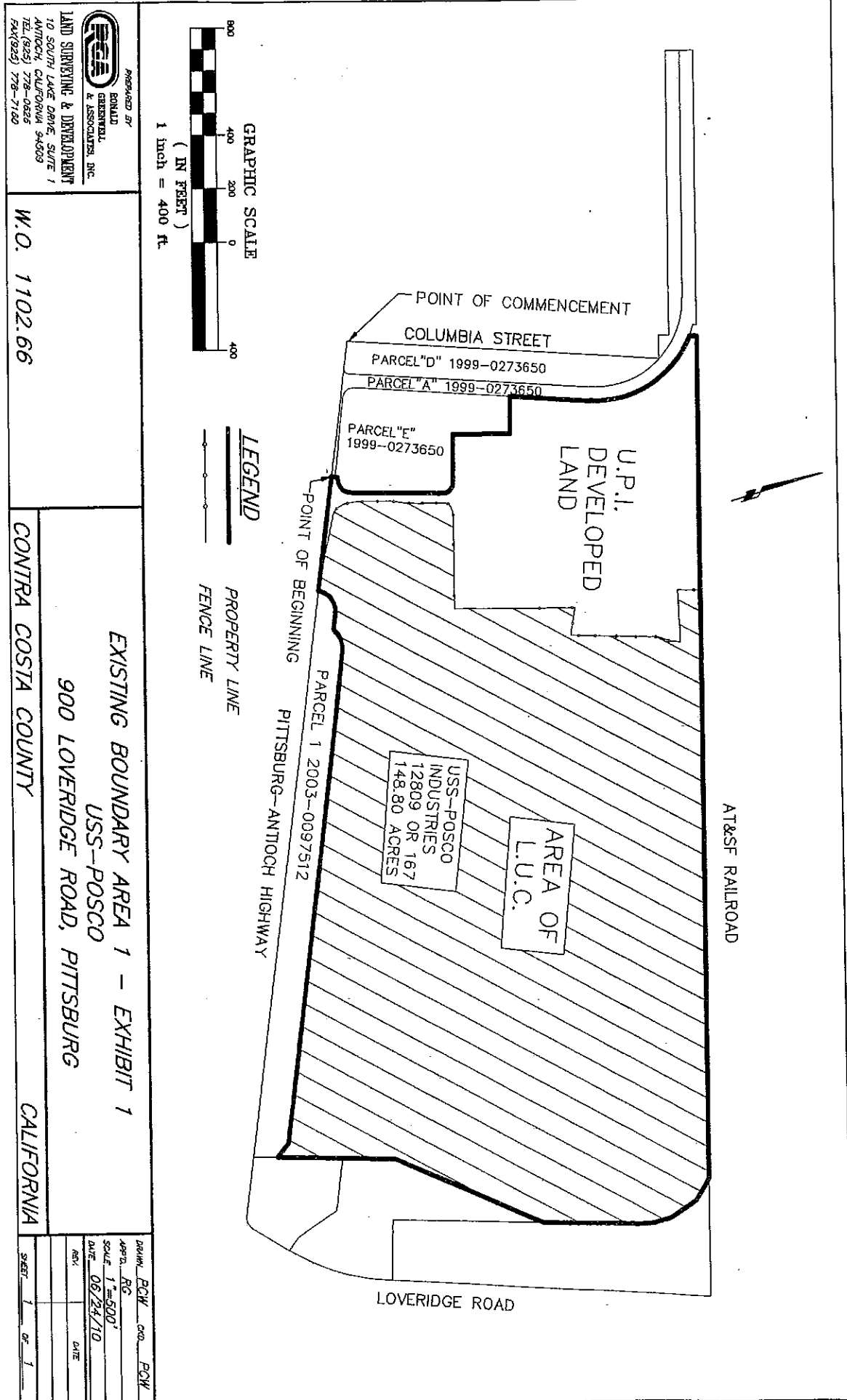
WITNESS my hand and official seal.

Signature *Ying Wai Chan*



(Seal)

EXHIBIT 1, "Existing Boundary Area 1"



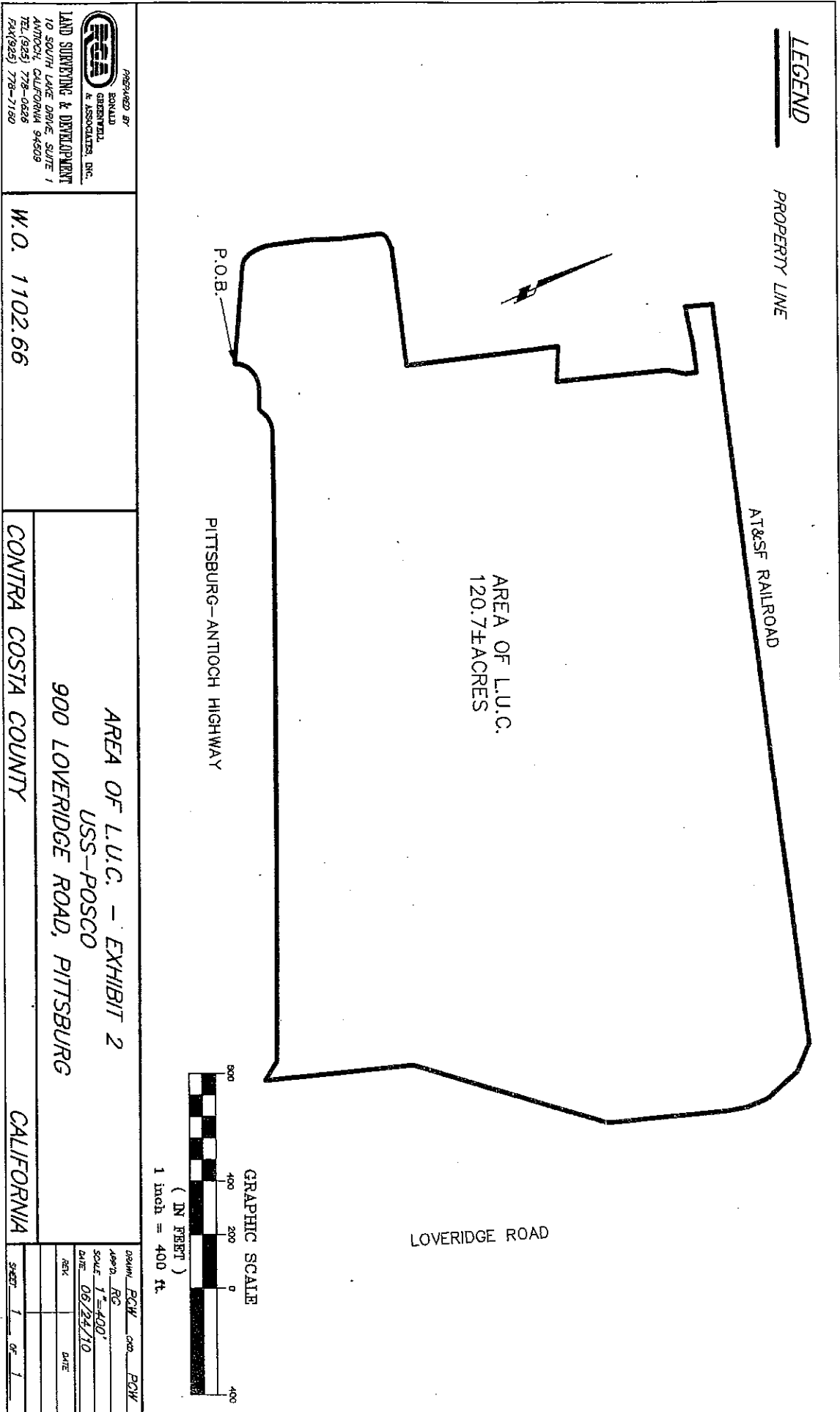


EXHIBIT 3
LEGAL DESCRIPTION OF
"AREA OF L.U.C."

Real property in the City of Pittsburg, County of Contra Costa, State of California, described as follows;

Beginning at the most westerly corner of a parcel described as "Parcel 1- Fee right of way" in the Final Order In Condemnation filed on March 03, 2003 as Document 2003-0097512, Contra Costa County Records, thence along the exterior of said parcel 1 the following courses and distances:

Along a non-tangent curve to the right concave southerly from which the radius bears South 66°10'14" East 91.86 feet, thence northerly and easterly through a central angle of 90°08'18" an arc distance of 144.52 feet;

Thence South 66°01'53" East 71.35 feet to the beginning of a tangent curve to the left, concave northerly from which the radius bears North 23°58'07" East 13.12 feet; Thence along said curve easterly and northerly through a central angle of 57°46'05" an arc distance of 13.23 feet to the beginning of a reverse curve from which a radius bears South 33°47'58" East 98.42 feet:

Thence along said curve northerly and easterly through a central angle of 54°17'00" an arc distance of 93.25 feet;

Thence South 67°03'38" East 428.74 feet;

Thence South 66°20'37" East 984.35 feet;

Thence South 66°12'58" East 788.39 feet;

Thence South 65°37'32" East 131.23 feet;

Thence South 34°54'33" East 82.84 feet to a point on the westerly line of that parcel shown on as Area 2 on said Record of Survey (79LSM19);

Thence along said westerly line the following courses and distances:

North 17°51'21" East 560.54 feet;

North 40°16'12" East 752.02 feet;

North 17°51'21" East 451.21 feet;

North 12°21'21" East 71.57 feet;

North 00°45'21" East 71.57 feet;

North 06°41'39" West 16.70 feet;

North 18°08'39" West 140.00 feet and North 42°55'45" West 115.44 feet to the northwest corner of Area 1, as shown on that Record of Survey filed in Book 79 of Land Surveyor Maps at Page 19;

Thence along the northerly line of Area 1 North 73°26'54" West 2755.52 feet;

Thence leaving said line along a chain-link fence the following courses and distances;

South 17°52'48" West 99.29 feet;

South 74°48'23" East 45.25 feet;

South 78°39'32" East 91.28 feet;

South 73°38'30" East 108.82 feet;

South 16°48'40" West 40.95 feet;

South 35°35'29" West 65.84 feet;

South 17°55'06" West 415.44 feet;

North 64°16'50" West 129.40 feet;

South 16°41'17" West 570.32 feet and North 73°32'32" West 436.84 feet to the beginning of a non-tangent curve to the left, concave southerly from which the radius bears South 08°58'52" West 120.00 feet; Thence along said curve westerly and southerly through a central angle of 18°35'33" an arc distance of 38.94 feet to the beginning of a non-tangent curve to the left, concave southwesterly from which the radius bears South 09°36'41" East 32.80 feet; Thence along said curve southerly and westerly through a central angle of 51°35'06" an arc distance of 29.53 feet to the beginning of a non-tangent line, and continuing along said fence;

South 16°38'36" West 155.13 feet;

South 22°19'18" West 110.36 feet;

South 16°32'49" West 143.67 feet to the beginning of a non-tangent curve to the left, concave easterly from which the radius bears South 70°58'22" East 180.52 feet; Thence along said curve westerly and southerly through a central angle of 32°28'14" an arc distance of 102.30 feet to the beginning of a non-tangent curve to the left, concave northeasterly from which the radius bears North 78°50'31" East 55.90 feet; Thence along said curve southerly and easterly through a central angle of 50°12'25" an arc distance of 48.98 feet;

Thence South 61°34'38" East 359.37 feet to the Point of Beginning.

Containing 120.68 Acres, more or less.

End of Description.

